RECENT CASES.

APPEAL—WAIVER—STIPULATIONS—AVOIDANCE—ARTHUR D. JONES CO. v. SPOKANE VALLEY LAND & W. CO., 87 PAC. 65 (WASH.).—*Held*, that where parties to a suit made a stipulation that any appeal taken from the judgment of the trial court should be taken in time to be heard at a certain date otherwise to be dismissed, a mistake by counsel as to the date of the commencement of the term was not a sufficient cause to avoid the dismissal. Fulton, J., *dissenting*.

The right of appeal is favored in the law and will not be held to have been waived except on clear and decisive grounds. *Hixon v. Oneida County*, 82 Wis. 520. Nevertheless, the right of appeal may be waived by an agreement supported by sufficient consideration. *Mackey v. Daniel*, 59 Md. 484. But not if agreement was the result of fraud, mistake, or surprise. *Town of Alton v. Town of Gilmanton*, 2 N. H. 520. Nor in criminal cases, *Smith v. Commonwealth*, 14 S. & R. (Pa.) 69. Such an agreement does not take away the right of the court to review on writ of error. *Putnam v. Churchill*, 4 Mass. 516. The attorney-general may waive his right of appeal by parol agreement and the same is binding on his successor. *Peo. v. Stephens*, 52 N. Y. 306. While there seem to be no cases involving mistake as applied to an agreement of this kind, it has been held, in the absence of any agreement, that an omission to file appeal papers owing to a mistake of fact, is not a sufficient cause to avoid dismissal of the appeal. *Gill v. Hudson*, 14 La. 203; *Rain v. Thomas*, 12 Fla. 493.

ASSAULT AND BATTERY—DAMAGES—FRIGHT OF WIFE.—HUTCHINSON v. STERN, 101 N. Y. SUP. 145.—*Held*, that the plaintiff in an action for an assault committed on him in the presence of his wife, cannot recover for injuries to the wife, occasioned by fright, and subsequent loss of service of the wife. Kruse and Spring, J. J., *dissenting*.

The general rule is that pain of mind is only the subject of damages when connected with bodily injury. *Morse v. Duncan*, 14 Fed. 396. However, this is subject to the qualification that a recovery for mental injuries and suffering alone is not precluded in cases of wilful tort. *Williams v. Underhill*, 71 N. Y. Sup. 291. So where plaintiff's wife was sick so that they could not move at the termination of his lease, and defendant started to tear down the house, exciting the sick woman and filling her room with dust, so that she had to be removed and shortly died, the defendant was held liable, though deceased suffered no immediate personal injury, and her death was due solely to fright and excitement. *Preiser v. Wielandt*, 62 N. Y. Sup. 890. But where the fright and mental suffering was not caused by a wilful tort but by an accident, no action can be maintained to recover the damages thereby sustained. *Lehman v. Brooklyn City Ry. Co.*, 47 Hun. 355. No well considered case has held that fright alone, not resulting from some physical injury to the person, will sustain an action for negligence. *Ewing v. Pittsburg C. and St. L. Ry. Co.*, 147 Pa. 40.

BILLS AND NOTES—IRREGULAR INDORSERS—LIABILITY—GOLDING SONS CO. v. CAMERON POTTERY CO., 55 S. E. 396 (W. VA.).—*Held*, that when a payee